

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(New Draft of H.P. 299, L.D. 358)
(New Title)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1118

H.P. 870

House of Representatives, March 9, 1983

Reported by Representative Stevens from the Committee on Business
Legislation and printed under Joint Rule No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT Relating to the Use of Assumed
Names by Corporations.

Be it enacted by the People of the State of Maine as
follows:

Sec. 1. 13-A MRSA §301, sub-§1, ¶B, as amended
by PL 1981, c. 544, §1, is further amended to read

B. Shall not be the same as, or deceptively
similar to, the name of any domestic corporation
existing under the laws of this State or any for-
eign corporation authorized to transact business
or to carry on activities in this State, or a
name the exclusive right to which is, at the
time, reserved in the manner provided in this
Act, or in Title 13-B, section 302, or the name

1 of a corporation which has in effect a registra-
2 tion of its corporate name as provided in this
3 Act, or in Title 13-B, section 303, or the
4 assumed name of a corporation as provided for in
5 section 307, or in Title 13-B, section 308,
6 unless such the other corporation executes and
7 files with the Secretary of State as provided in
8 sections 104 and 106 proof of a resolution of its
9 board of directors authorizing the use of a simi-
10 lar name by the corporation seeking to use such
11 the similar name, or unless the corporation
12 seeking to file under a similar or identical name
13 executes and files with the Secretary of State,
14 as provided in sections 104 and 106, proof of a
15 resolution of its board of directors that it will
16 not do business under that similar or identical
17 name, but instead will do business under an
18 assumed name, as provided for in section 307,
19 which is not identical or similar to any corpo-
20 rate name or any reserved name, registered name
21 or assumed name, or any trademark or service mark
22 registered under Title 10, chapter 301-A; and

23 Sec. 2. 13-A MRSA §302, sub-§6 is enacted to
24 read:

25 6. Interim reservation. Notwithstanding the re-
26 quirements of subsection 2, any person may, for a
27 period of 10 days, reserve the exclusive right to the
28 use of a corporate name in the name of a corporation
29 or a person meeting the requirements of subsection 1.
30 A reservation established pursuant to this subsection
31 may not be renewed in the name of that corporation or
32 person for 30 days from the date of that reservation.

33 In addition to other permitted filings, a reservation
34 for 120 days may be made during this 10-day period.

35 Sec. 3. 13-B MRSA §301, sub-§1, ¶B, as amended
36 by PL 1979, c. 572, §11, is further amended to read:

37 B. Shall not be the same as, or deceptively
38 similar to, the name of any domestic business or
39 nonprofit corporation existing under the laws of
40 this State or any foreign business corporation
41 authorized to transact business or nonprofit cor-
42 poration authorized to carry on activities in

1 this State, or a name the exclusive right to
2 which is, at the time, reserved in the manner
3 provided in this Act, or in Title 13-A, section
4 302, or the name of a business or nonprofit cor-
5 poration which has in effect a registration of
6 its corporate name as provided in this Act, or
7 the assumed name of a business corporation as
8 provided for in Title 13-A, section 307, or of a
9 nonprofit corporation as provided in Title 13-B,
10 section 308, unless such the other corporation
11 executes and files with the Secretary of State
12 proof of a resolution of its board of directors
13 authorizing the use of a similar name by the cor-
14 poration seeking to use such that similar name;
15 and

16 Sec. 4. 13-B MRSA §308 is enacted to read:

17 §308. Assumed name of corporation

18 1. Assumed name. As used in this section,
19 "assumed name" includes a trade name, the name of a
20 division not separately incorporated and not used in
21 conjunction with the true corporate name and any
22 other name than the true name of a corporation.

23 2. Corporation or foreign corporation. Upon
24 complying with this section, any corporation or for-
25 foreign corporation authorized to carry on activities in
26 this State may carry on its activities in this State
27 under one or more assumed names.

28 3. Statement. Before carrying on any activities
29 in this State under an assumed name, the corporation
30 or foreign corporation shall execute and deliver for
31 filing, in accordance with sections 104 and 106, a
32 statement setting forth:

33 A. The corporate name and the address of its
34 registered office;

35 B. That it intends to carry on activities under
36 an assumed name;

37 C. The assumed name which it proposes to use;
38 and

1 D. If the assumed name is to be used at less
2 than all of the corporation's locations in this
3 State, the locations where it will be used. A
4 separate statement shall be executed and deliv-
5 ered for filing with respect to each assumed name
6 which the corporation proposes to use.

7 4. Compliance with statutes. Each assumed name
8 shall comply with the requirements of section 301,
9 subsection 1, except for the similarity with the true
10 corporate name of the corporation proposing the use
11 of the assumed name.

12 5. Noncompliance. If a corporation or foreign
13 corporation uses an assumed name without complying
14 with the requirements of this section, the continued
15 use thereof may be enjoined upon suit by the Attorney
16 General or by any person adversely affected by that
17 use.

18 6. Use of assumed name; suit. Notwithstanding
19 its compliance with the requirements of this section,
20 the use of an assumed name may be enjoined upon the
21 suit of the Attorney General or of any person
22 adversely affected by that use, if:

23 A. The assumed name did not, at the time the
24 statement required by subsection 3 was filed,
25 comply with the requirements of section 301, sub-
26 section 1; or

27 B. The assumed name is deceptively similar to a
28 name in which the plaintiff has prior rights by
29 virtue of the common law or statutory law of
30 unfair competition, unfair trade practices, com-
31 mon law copyright or similar law.

32 The mere filing of a statement pursuant to sub-
33 section 3 shall not constitute actual use of the
34 assumed name set out in subsection 3 for purposes of
35 determining priority of rights.

36 Sec. 5. 13-B MRSA §1401, sub-§10-A is enacted to
37 read:

38 10-A. Assumed name statement. Assumed name
39 statement, as provided by section 308, §5;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATEMENT OF FACT

This new draft corrects several oversights in the original bill.

Section 1 amends the business corporation statute to clarify that the name availability requirement applies equally to business and nonprofit corporations. It also eliminates the specific reference to trademarks and service marks and replaces that reference with the general term "mark".

Section 2 allows a business corporation to reserve a name until its representative is able to make the necessary filings in Augusta, for up to 10 days.

Section 3 changes an erroneous reference in the bill to "business" conducted by nonprofit corporations. The usual reference in the nonprofit statute is to "carrying on activities" while business corporations are considered to "transact business".

Section 4 establishes the assumed name provision for nonprofit corporations. The same provision now exist for business corporations.

Section 5 establishes a fee for filing an assumed name for a nonprofit corporation. This \$5 fee is similar to other fees paid by nonprofit corporations for other filings.

2538022283